



POLICE DEPARTMENT

May 11, 2022

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In the Matter of the Charges and Specifications
- against -

Police Officer Malinda Walker
Tax Registry No. 963926
102 Precinct

Case No.
2019-20738

Police Officer Jessica Lalli
Tax Registry No. 943459
102 Precinct

Case No.
2019-20739

Police Officer Ted Saint-Gerard
Tax Registry No. 934145
109 Precinct

Case No.
2019-20740

Police Officer Marisol Torres
Tax Registry No. 952298
102 Precinct

Case No.
2019-20741
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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU:

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Civilian Complaint Review Board
100 Church Street, 10th Floor
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For the Respondents:

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To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2019-20738

1. Police Officer Malinda Walker, on or about July 11, 2018, at approximately 8:18 a.m., while assigned to 102 PCT and on duty, inside of [REDACTED] County, abused her authority as a member of the New York City Police Department, in that she sexually humiliated [Complainant] when she left [Complainant] on her bed naked, face down, and handcuffed without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

Disciplinary Case No. 2019-20739

1. Police Officer Jessica Lalli, on or about July 11, 2018, at approximately 8:18 a.m., while assigned to 102 PCT and on duty, inside of [REDACTED] County, abused her authority as a member of the New York City Police Department, in that she sexually humiliated [Complainant] when she left [Complainant] on her bed naked, face down, and handcuffed without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT
PROHIBITED CONDUCT

Disciplinary Case No. 2019-20740

2. Police Officer Ted Saint-Gerard, on or about July 11, 2018, at approximately 8:18 a.m., while assigned to 102 PCT and on duty, inside of [REDACTED] County, wrongfully used force, in that he improperly used pepper spray against [Complainant] [REDACTED] without police necessity.¹

P.G. 221-07, Page 2

USE OF OLEORESIN CAPSICUM
PEPPER SPRAY DEVICES

3. Police Officer Ted Saint-Gerard, on or about July 11, 2018, at approximately 8:18 a.m., while assigned to 102 PCT and on duty, inside of [REDACTED] County, abused his authority as a member of the New York City Police Department, in that he sexually humiliated [Complainant] when he left [Complainant] on her bed naked, face down, and handcuffed without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

¹ Specification 1 had charged Respondent Saint-Gerard with *unlawfully* using O.C. pepper spray on the aunt. Before trial, with the consent of the parties, that count was dismissed, and the allegation that Respondent Saint-Gerard wrongfully used O.C. pepper spray was addressed with Specification 2.

4. Police Officer Ted Saint-Gerard, on or about July 11, 2018, at approximately 8:18 a.m., while assigned to 102 PCT and on duty, inside of [REDACTED] County, was discourteous, in that he spoke discourteously to [REDACTED] Complainant when he stated, "She shit herself," without sufficient legal authority.

P.G. 203-09, Page 1, Paragraph 2

PUBLIC CONTACT –
PROHIBITED CONDUCT

Disciplinary Case No. 2019-20741

1. Police Officer Marisol Torres, on or about July 11, 2018, at approximately 8:18 a.m., while assigned to 102 PCT and on duty, inside of [REDACTED] County, abused her authority as a member of the New York City Police Department, in that she sexually humiliated [REDACTED] Complainant when she left [REDACTED] Minor B on her bed naked, face down, and handcuffed without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on April 4, 2022. Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. The CCRB did not call any witnesses, but introduced two hearsay statements from the complainant. Respondents testified on their own behalves. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find the Respondents not guilty of all charges.

ANALYSIS

On the morning of July 11, 2018, the four Respondents answered a call for a family dispute with a knife at a two-family home. The officers, travelling in two separate vehicles,

arrived at the location at about the same time. Outside the home, the officers spoke with an individual ("the niece"), who informed them that her aunt, who was upstairs, had just threatened her with a knife. She also stated that her two brothers were still in the apartment with her aunt. The niece led the officers upstairs, and they entered the apartment; there is no allegation that the entry was improper.

It is alleged that once inside the apartment, Respondent Saint-Gerard improperly used his Oleoresin Capsicum Pepper Spray ("O.C. pepper spray") on the aunt during the process of apprehending her. It also is alleged that Saint-Gerard was discourteous to the aunt by stating, "She shit herself." Additionally, all four Respondents are charged with sexually humiliating the aunt by leaving her naked and handcuffed on the bed until EMS arrived.

The aunt did not appear to testify at trial. Instead, transcripts from her two CCRB interviews were admitted into evidence. It is well-settled that hearsay evidence is admissible in administrative proceedings, and may form the sole basis for a finding of fact. The hearsay, however, must be carefully evaluated to determine whether it is sufficiently reliable. It is preferable to have testimony from a live witness, where opposing counsel has the opportunity to cross examine, and the court can observe the witness's demeanor. In the absence of live testimony from the aunt here, this tribunal carefully considered her prior statements, in conjunction with the other evidence presented at trial.

In the first interview, which occurred on July 13, 2018 (CCRB Ex. 1), the aunt called CCRB to file a complaint for what she characterized as "abuse and assault." She detailed that following her niece's complaint that she threatened her with a knife, a complaint she denied, three female officers and one male officer entered her apartment while she was brushing her

teeth and covered only by a towel. She alleged that when she went inside her room with a female officer to retrieve some clothes, a male officer came into the room, tried to handcuff her, and “sprayed Mace” in her eye, causing a burning sensation throughout her face. (Dept. Ex. 1 at 2, 6-9)

At a more extensive interview, which took place at the offices of the CCRB five days later on July 18, 2018, the aunt reiterated that, following an argument with her niece, the officers arrived at her two-family home when she was brushing her teeth, wearing only a towel. After a female officer told her to get some clothes, she went to get dressed inside her bedroom, a tight space where the bed is against the door and one must pull back the door to go around the bed. She insisted she was not trying to lock or close the door, simply trying to get dressed. The aunt claimed that the male officer came into the bedroom, pushed past a female officer, closed the door behind them and told her, “You’re coming with me,” as she tried to call her daughter on the phone. She acknowledged she walked away and told him “I’m not going anywhere with you...unless I know where I’m going.” This led to him trying to grab her; during the course of this encounter, her towel fell off leaving her completely naked as the officer was taking out his pepper spray and “aim[ing] straight in my eye.” She recalled that the pepper spray burned all over her skin because she did not have any clothes on, and that as the spray went in her eyes, “it shuttered me some to...I went on myself. I passed feces on myself.” (Dept. Ex 2 at 3-7, 9, 24, 33-34, 38-40, 43, 49-50, 53)

The aunt recounted that after the male officer handcuffed her, the officers exited the room because of the strong fumes, and left her crying and screaming on her bed. She alleged that the officers were laughing and saying, “she shit herself, she shit herself.” She further claimed the

male officer inaccurately told the others, “She shit herself before I sprayed her.” She estimated she laid face-down in the bedroom completely unclothed for 40 minutes until the EMTs covered her and removed her to the hospital. (Dept. Ex 2 at 8, 52, 54-59)

Each of the four Respondents was essentially consistent in their testimony about the events inside the apartment. Respondent Lalli, in particular, provided the most detailed account of what occurred, as she took the lead in dealing with the aunt. The officers arrived at the location within five minutes of receiving the call. After speaking with the frightened niece, the officers went upstairs and entered the apartment, where they observed the aunt with a toothbrush in her hand, and her body wrapped in a towel. The aunt was screaming loudly and incoherently; Respondent Lalli, who has prior experience as an EMT, tried to calm her down, but the aunt was “inconsolable,” and continued to jump up and down and scream. Respondent Lalli saw a knife on the kitchen counter, which the officer grabbed and placed somewhere secure. She also observed two boys, approximately 15 or 16 years of age, looking out from a bedroom; she instructed them to “get downstairs,” and they immediately complied. (Tr. 26-31, 38-39, 52-53, 75, 87-88)

In an attempt to defuse the situation, and stop the aunt from moving around the apartment where she might obtain a knife or other weapon, Respondent Lalli asked her to sit down to talk, but the aunt refused. The officers decided to have the aunt get dressed, and asked her where she kept her clothing; the aunt pointed to her bedroom, a small room with the bed pressed up against the entrance. As Respondent Lalli placed her knee on the bed in the process of entering the room, the aunt unexpectedly followed directly behind her, jumped over Respondent Lalli’s back, and pushed her way into the bedroom. Respondent Lalli observed a second knife on a dresser

inside the room, announced to her fellow officers that there was a knife, and immediately grabbed it, which she then handed off to one of her colleagues. The aunt, meanwhile, stood in another corner of the bedroom. (Tr. 31-35, 54-56, 75-77, 88)

At this point, Respondent Saint-Gerard followed his colleague into the bedroom. Respondent Saint-Gerard tried to grab the aunt's wrist in order to handcuff her, but she pulled away and his grip slipped. The aunt was now holding a cordless phone, which the officers told her to put down, to no avail. She continued to scream and jump around, and swung the phone at Respondent Saint-Gerard's face; as Respondent Saint-Gerard raised his arm to protect himself, the aunt's forearm twice struck his forearm. The aunt continued to swing at Respondent Saint-Gerard, who was concerned that the aunt, who was not listening to the officers, would hurt one of them. He backed up, and sprayed the aunt with his O.C. pepper spray, which he determined was a better, safer option to gain control than employing hand or foot strikes, or a forcible takedown. (Tr. 36, 39, 57-60, 69-70, 77-78)

At some point during the struggle inside the bedroom, the aunt defecated on herself and on the floor. Respondent Saint-Gerard noticed that some of it got onto his shoes and pants leg. He wanted to warn his colleagues to avoid coming into contact with the potentially hazardous matter themselves, and so he informed them that the aunt had "shit herself." Respondent Saint-Gerard explained that he used the word "shit" because it is the simple, common street-term to describe what had occurred, and his primary concern was conveying the situation to his fellow officers as quickly and clearly as possible. (Tr. 37, 61-63, 66, 78, 89, 91)

Once the aunt was sprayed, she immediately calmed down. She was handcuffed and placed on the bed, on her stomach, with her head turned to the side. A towel was placed over the

aunt's body, covering her private parts, and she remained on the bed until EMS arrived less than five minutes later. EMS wrapped the aunt's body in another sheet, and removed her from the location. The aunt was charged with menacing, assault, and other charges. (Tr. 40-42, 60-61, 63-65, 79-80, 91)

The Respondents all acknowledged that the two teenage boys were out of the apartment before the point where the aunt was sprayed. They also agreed that the only two knives they specifically observed inside the apartment were the ones secured by Respondent Lalli in the kitchen and bedroom. (Tr. 43-45, 67-68, 82)

After carefully reviewing the evidence, I credit the testimony provided by each of the Respondents. They came across as professional, answered questions willingly, and were essentially consistent in their accounts. In contrast, the aunt did not appear to testify, and was not subject to cross examination. There was no opportunity at trial to observe her demeanor, or to explore the details of her story, including her claim that she was left completely naked by the officers. Her erratic behavior inside the apartment raises serious questions about her reliability as a narrator, and her description of events in her hearsay statements often appeared embellished. With that in mind, we turn to the specifications.

All four Respondents are charged with sexually humiliating the aunt by wrongfully leaving her naked and handcuffed on the bed until EMS arrived. In her in-person hearsay statement on July 18, 2018, the aunt claimed that she was left on the bed, unclothed, for approximately 40 minutes until the EMTs arrived and covered her. However, as indicated above, I credit the testimony of the officers that they, in fact, covered the aunt's private parts

with a towel after she was handcuffed and placed on the bed. EMS arrived *less than five minutes later* and removed the aunt from the apartment.

Further, there was no indication, from the credible evidence, that the Respondents were attempting to humiliate the aunt. In fact, their behavior inside the apartment suggests just the opposite – the Respondents repeatedly tried to persuade the aunt to calm down and speak with them, and Respondent Lalli specifically went to the bedroom, at risk to herself, in order to retrieve clothing for the aunt to get dressed.

As such, the record has failed to establish that the Respondents sexually humiliated the aunt by leaving her naked on the bed. Accordingly, I find each of the four Respondents not guilty.

Respondent Saint-Gerard also faces two additional charges. Specification 2 charges him with improperly using O.C. pepper spray against the aunt without police necessity. Section 221-07 of the Patrol Guide states that “O.C. pepper spray may be used to gain or maintain control of persons who are actively resisting arrest or lawful custody, or exhibiting active aggression, or to prevent individuals from physically injuring themselves, members of the service, or other persons.” Active resistance “includes physically evasive movements to defeat a member of service’s attempt at control.”

On the one hand, counsel for the CCRB correctly notes that by the time Respondent Saint-Gerard deployed his O.C. pepper spray, the two teenage boys had safely been removed from the apartment. Additionally, the two knives that the officers specifically observed had already been secured.

Nevertheless, the credible evidence has established that in this particular situation, Respondent Saint-Gerard's use of the O.C. pepper spray was reasonable. The officers were in the process of arresting the aunt, who just minutes earlier had been menacing her niece with a knife, while two teenagers were present inside the apartment as well. The aunt was screaming incoherently and moving about the apartment, ignoring the officers' efforts to calm her down. When Respondent Lalli went into the bedroom to find clothes for the aunt, the aunt rushed into the room behind her. Respondent Saint-Gerard joined them in the bedroom, a small room without much space to maneuver.

As Respondent Saint-Gerard attempted to handcuff the aunt, she pulled away. The aunt was screaming, and she swung a cordless phone that she held in her hand in Respondent Saint-Gerard's direction. When the officer raised his arm to protect himself, the aunt's arm made contact with him. This was not a case of passive resistance by the aunt; rather, she was *actively* resisting the efforts of Respondent Saint-Gerard to place her under arrest.

Moreover, this was a situation that was fraught with risk for Respondent Saint-Gerard and his colleagues. The aunt was behaving in a dangerously unpredictable, erratic manner. The officers did not have any familiarity with the apartment, and did not know where there might be additional knives or other weapons. As Respondent Saint-Gerard testified, "We didn't want her to get another weapon... Who knows what she had in the room. We don't know." In this context, I credit Respondent Saint-Gerard's explanation that the officers did not want the aunt to gain access to another weapon, and that they needed to get her under control and in custody.

Toward that end, Respondent Saint-Gerard made the decision to step back and deploy his O.C. pepper spray. The aunt, who seconds earlier had been actively resisting, became

immediately calm, which allowed the officers to gain control. She was promptly placed in handcuffs, effectively ending any threat to those present.

Under the totality of the specific circumstances presented here, I find that Respondent Saint-Gerard acted reasonably in his use of the O.C. pepper spray. The record has failed to establish, by a preponderance of the credible evidence, that Respondent Saint-Gerard improperly used O.C. pepper spray against the aunt without police necessity. Accordingly, I find Respondent Saint-Gerard not guilty of Specification 2.

Specification 3, in which Respondent Saint-Gerard was found not guilty of sexually humiliating the aunt by leaving her handcuffed and naked on the bed, was discussed above.

Specification 4 charges Respondent Saint-Gerard with discourtesy toward the aunt by stating, "She shit herself," without sufficient legal authority. Section 203-09 of the Patrol Guide requires members of the service to be courteous and respectful. Discourtesy may include foul language, acting in a rude or unprofessional manner (such as demeanor or tone), and flashing rude or offensive gestures that is unjustified or unwarranted, with no legitimate law enforcement purpose.

Here, the aunt, in her second hearsay statement, alleged that Respondent Saint-Gerard said "she shit herself," and that all of the officers were laughing about it. Respondent Saint-Gerard did not dispute making the statement, but credibly explained that his purpose in doing so was to alert his colleagues for safety reasons, rather than to ridicule the aunt. Respondent Saint-Gerard had actually observed some of the feces on his clothing, which could have been hazardous; this was not a joking situation for him. The other Respondents confirmed that it was

useful information for them to have, and that they took it serious as well. As such, I reject the suggestion that the officers were all laughing about this.

To be sure, this was an embarrassing moment for the aunt, and, in an ideal situation, the officer could have chosen his words more carefully. However, given the dangerously chaotic circumstances faced here by Respondent Saint-Gerard and his colleagues, I am not persuaded that his choice of words was gratuitous, rude, or unprofessional. The record has failed to establish that Respondent Saint-Gerard was discourteous to the aunt. Accordingly, I find him not guilty of Specification 4.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED



SEP 02 2022
KEECHANT L. SEWELL
POLICE COMMISSIONER